

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 99-68

November 9, 1999

TO: All Regional Directors, Officers-in-Charge, and
Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Allegations that Unions Unlawfully Charged Objectors Organizing
Expenses

One of the major Beck¹ issues remaining after the Board's decision in California Saw & Knife Works² was whether it is lawful for a union to charge the cost of organizing to nonmembers who object to paying nonrepresentational expenses. The Board recently addressed this issue in Food & Commercial Workers Locals 951, 1036 & 7 (Meijer, Inc.), 329 NLRB No. 69, (September 30, 1999). The Board found organizing expenses to be properly chargeable to nonmember objectors "at least with respect to organizing within the same competitive market as the bargaining unit employer."³ The Board based this conclusion on "the language of the Act and its underlying policies and on the economic realities of collective bargaining in general and in the retail food industry particularly."⁴ In so finding, the Board concluded that Ellis v. Brotherhood of Railway, Airline and Steamship Clerks,⁵ in which the Supreme Court found organizing expenses to be nonchargeable under the Railway Labor Act, does not apply to cases under the NLRA.

The Board, in footnote 20 at pp. 4-5, slip op., stressed that there was no contention that the local unions involved sought to organize "employees of employers who are not competitors of the employers of the employees represented by the Respondents." The Board specifically limited its holding to those organizing expenses "within the competitive market" and stated: "We find

¹ Communications Workers v. Beck, 487 U.S. 735 (1988).

² 320 NLRB 224 (1995), enf. sub nom. Machinists v. NLRB, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. Strang v. NLRB, 119 S.Ct. 47 (1998).

³ 329 NLRB at 4, slip op.

⁴ 329 NLRB at 5, slip op. The employers involved in Meijer were all in the retail food industry.

⁵ 466 U.S. 435 (1984).

it unnecessary to decide and shall defer to another case the question of whether unions may charge objectors for organizing costs incurred outside the competitive market.”

Consequently, all Regions should examine any allegations they are holding in abeyance that relate to the chargeability to nonmember objectors of organizing expenses.⁶ Each Region should determine whether the organizing expenses at issue are related solely to organizing “within the competitive market” under Meijer, or instead extend to employers who are not competitors of the employers of the employees at issue. The Region may find it necessary to conduct additional investigation to make this determination.

If a Region concludes that the organizing expenses being charged in its case are within the employer’s “competitive market” under Meijer, it should dismiss that allegation. On the other hand, if the Region concludes that the organizing expenses at issue in its case extend outside the “competitive market” under Meijer, it should submit that case to the Division of Advice as to whether it should argue that these costs are not properly chargeable. In addition, if a Region has questions as to whether the organizing expenses at issue in its case are within the “competitive market” under Meijer, it should also submit these questions to the Division of Advice.

Please refer any questions concerning this memorandum to Deputy Assistant General Counsel Jane C. Schnabel, Associate General Counsel Barry J. Kearney, or the undersigned.

/s/
R.A.S.

MEMORANDUM OM 99-68

cc: NLRBU

⁶ In some cases, the organizing cost allegation was the only allegation the Region found meritorious that did not settle. In other cases, the Region approved a settlement agreement conditioned upon the Board’s resolution, in other cases, of the issue of whether organizing expenses are lawfully chargeable. Similarly, where there were other allegations in the charge that the Region found meritorious and that did not settle, the Region obtained from the union a Jefferson Chemical stipulation and waiver as to the organizing expense allegation.